IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 19464 of 2004(P)

PETITIONER:

K.ABUBACKER @ BAPPU, S/O.MUHAMMEDKUTTY, KUNDURUMMEL HOUSE, NELLISSERY. P.O.SUKAPURAM P.O. VIA.EDAPPAL, MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.KRISHNAN UNNI
SRI.T.S.ARUNKUMAR

RESPONDENTS:

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1. **STATE OF KERALA,R EP. BY THE SECRETARY TO GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **THE ASSISTANT EDUCATIONAL OFFICER, EDAPPAL, MALAPPURAM DISTRICT.**

4. **SRI.P.BAVA HAJI, PANDHALINGAL HOUSE, KAKKADIPPURAM, P.O.ALANGODE, MALAPPURAM DISTRICT.**

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR
GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.19464/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER DT.28.4.2003 ADDRESSED TO R3 BY THE PETITIONER.

EXT.P2:- COPY OF THE JUDGMENT DT.25.9.2003 IN WP(C) NO.23923/ 2003.

EXT.P3:- COPY OF THE ORDER NO.C/2594/93 DT.4.11.2003 ISSUED BY R3.

EXT.P4:- COPY OF THE ORDER NO.G2-92003/03/DPI DT.5.1.2004 PASSED BY R2.

EXT.P5:- COPY OF THE REVISION PETITION DT.30.1.2004 SUBMITTED BY THE PETITIONER BEFORE R1.

EXT.P6:- COPY OF THE ORDER NO.G.O.(RT) 2332/2004/G.EDN. DT.8.6.2004. ISSUED BY R1.

EXT.P7:- COPY OF THE ORDER NO.C/6044(1) 2004 DT.3.1.2005 BY THE 3RD RESPONDENT TO THE PETITIONER.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

W.P.(C).NO.19464 of 2004-P

Dated this the 22nd day of January, 2007

JUDGMENT

The petitioner has approached this Court feeling aggrieved by the decision of the 3rd respondent approving the 4th respondent as the manager of Nellissery Aided U.P.School, the educational agency of which is a trust called 'Nellissery Maslahathool Muslimeen Educational Trust'. The said order of the Assistant Educational Officer was affirmed in appeal, by the Director of Public Instructions and in revision by the Government. The brief facts of the case are as follows:

2. The Nellissery M.M. Educational Trust was registered on 18-4-1983. The term of the President as per the deed is for a period of 5 years. The President of the Trust shall be elected by the members of the Trust. The Trust itself provides that the manager of the school will be the President of the Trust. The petitioner was continuously the President of the Trust from 1983. He was being elected from time to time. On expiry of his term on 19-3-2003, the petitioner convened a meeting of the members of the Trust on 27-4-2003. He was elected President of the Trust.

So, he moved the A.E.O. for approving him as the manager of the afore-mentioned school on 28-4-2003. Subsequently, the 4th respondent herein, claimed that he was elected President of the Trust on 21-4-2003 and he submitted a representation dated 28-5-2003 before the A.E.O. claiming that he may be approved as the manager. The A.E.O. considered the rival claims of the petitioner and the 4th respondent and by Ext.P3 order dated 4-11-2003 approved the 4th respondent as the manager of the school with effect from 25-4-2003 under Rule 4 (2) of Chapter III K.E.R. Aggrieved by that the petitioner filed an appeal before the Director of Public Instruction on 17-11-2003. The D.P.I. heard both sides and passed Ext.P4 order affirming Ext.P3 order. The petitioner filed Ext.P5 revision challenging Ext.P4. That revision was dismissed by the Government by Ext.P6. According to the petitioner, the authorities under the K.E.R. have no power or authority to decide regarding the correctness of the election of the President of the Trust. So, they clearly exceeded their jurisdiction while passing the impugned orders. So, the petitioner submits those orders may be set aside and there may be a direction to the A.E.O. to approve the petitioner as the validly of elected manager. He relies on Ext.P2 judgment of the Division

Bench of this Court wherein it is stated that the dispute involved is with respect to the management and affairs of a Trust. It being a civil dispute it should be settled by the Civil Court. Ext.P2 is the judgment rendered in W.P.(C).23923 of 2003 filed by the 4th respondent seeking police protection. The petitioner also relied on the decision of this Court in Abdul Rahim Vs. State of Kerala (1984 KLT 773) in support of his submissions.

3. The 4th respondent has filed a counter affidavit resisting the prayers in the original petition. He has produced Ext.R4(a) which is the registered Trust Deed. The said deed has been amended by Ext.R4(b) registered amendment. As per the amendment, the Secretary is the competent authority of the general bodies of the Trust. In this case on 21-4-2003 the Secretary convened a meeting to hold election to the office of the Secretary. Out of the 14 members, 10 participated. The 4th respondent was elected President. Ext.R4 (c) is the minutes of that meeting. In Ext.R4 (d) judgment rendered in W.P.(C).38406 of 2003 filed by the writ petitioner, this Court has directed the D.P.I. to decide the appeal filed by the writ petitioner against Ext.P2. The 4th respondent submits the claim of the petitioner that the educational authorities have no power or jurisdiction to

decide regarding the management dispute is unsustainable. Though they cannot decide the validity of the election they can enter a prima facie finding deciding as to who should be appointed as the manager, it is submitted. The 4th respondent also relies on the decision of the Division Bench of this Court in Abdul Rahim Vs. State of Kerala mentioned above. The petitioner has filed a reply affidavit dealing with the averments of the 4th respondent. The first respondent has filed a detailed counter affidavit supporting the impugned orders. The respondent maintains the stand that the 4th respondent was validly elected President of the Trust.

4. Heard the learned counsel on both sides. It is for the educational agency to appoint the manager. In this case, the Trust is the educational agency. Under Rule 4 of Chapter III of K.E.R. the approval of appointments are made. The said Rule reads as follows:

> 4. Approval of appointment of Mangers-(1) The educational Officers shall be competent to approve the appointment of Managers by Educational Agencies and to approve changes in the personnel of the Managers.
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> (2) If the Educational Agencies have schools in more than one Educational District within a (Revenue District) the appointment of

> managers and changes in the personnel of the managers may be approved by the (Deputy Director (Education) having jurisdiction in the (Revenue District) if the Educational Agencies have schools in more than one (Revenue District) the appointment of managers and changes in the personnel of the Managers may be approved by the Director of Public Instruction).
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> 2A. The approval of appointment of Managers and Changes in the personnel of the Mangers under sub-rules (1), and (2) above shall take effect from the date of actual assumption of charge of the management specified in the order of approval issued by the competent authorities concerned.
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> 3. Any person aggrieved by an order of the Educational Officer under sub-rule (1) or of the (Deputy Director (Education) under sub-rule (2) may within 30 days from the date of receipt of the order prefer an appeal to the Director.
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> 4. Government may, on their own motion or otherwise, revise and order passed by the Director of Public Instruction.

5. When there is a dispute in the educational agency the said dispute has to be settled by the Civil Court. But, in this case, by virtue of the provisions of the Trust Deed, the President of the Trust is the ex-officio manager of the school. Therefore, the educational officer who is enquiring about the validity of appointment of manager will incidentally has to look into the

election of the President also. That is what has been done in this case. Without looking into the rival claims concerning the election as President, the educational officer cannot take a decision. So, I find nothing illegal with the procedure followed by the educational officer and higher authorities. But, whether the petitioner was elected or the 4th respondent was elected is a matter which has to be decided by the Civil Court. The findings of the educational officer, the D.P.I. and the Government will be subject to the decision of the Civil Court in the case, if any, filed by the parties. It has been so held by the Division Bench of this Court in Abdul Rahim Vs. State of Kerala (1984 KLT 773).

> " This Court in the judgment in W.A.Nos.152 & 191 of 1978 stated as follows:
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> > " It was pointed out by this Court that the Kerala Education Act and the Rules left it to the statutory authorities constituted by them to decide the question of the right of management to school to the best of their resources and ability, and that this Court would not be justified, especially in writ proceedings, in directing the parties to fight out their rival claims in a Civil Court and on that ground alone to interfere with the decision arrived at by the statutory authorities. It follows therefore that the course adopted by the learned Judge of setting aside Exts.P20 and P26 on the only ground

> that in the interests of justice, the parties should fight out their rival claims in a Civil Court, is not justified or proper, and cannot be sustained."

> It is doubting the correctness of this decision that our learned brother Narendran J. by the order dated 12-12-80 referred the matter to a Division Bench. We understand the Division Bench ruling as one laying down that it is for the statutory authorities constituted under the Kerala Education Act and the Rules framed thereunder, to the best of their resources and ability, to decide the question of the right of management of the school. We do not, however, understand it as one laying down a proposition that such decisions taken by the Educational Authorities would conclude the civil rights of the parties to the properties involved. The decisions of the Educational Authorities are not meant to settle civil rights of the parties to such properties. These decisions are in the nature of summary determination for the sake of expediency, without waiting for the result of a protracted litigation in a civil Court. There could be no doubt that the right to agitate on questions of civil rights in a civil Court would remain unaffected in spite of the decision functions and fulfilling the obligations under the Act. It does not, and cannot oust the jurisdiction of the civil Court in matters touching the civil rights of the parties."

The Division Bench also relied on the decision of both sides and laid down by the very same decision.

In the result, the writ petition fails, and it is dismissed without prejudice to the contentions of the petitioner regarding the validity of the election. If the Civil Court passes any interim or final order regarding the election of incumbent, needless to say, the Assistant Educational Officer shall correspondingly modify the approval granted to the manager to make the same in tune with the decision of the Civil Court.

K.BALAKRISHNAN NAIR,JUDGE.

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